

CC:IT&A:TR-45-1208-91
Br2:KALaCour

Chief, Examination Division
St. Paul District

Assistant Chief Counsel (Income Tax & Accounting)

Partner's Deduction of Unreimbursed Expenses

In a memorandum dated July 19, 1991, you requested technical assistance regarding whether a partner can deduct unreimbursed expenses incurred in performing partnership duties above the line under section 62(a)(1) of the Internal Revenue Code. You indicate that a partner should only be able to deduct such expenses below the line as miscellaneous itemized deductions subject to the 2-percent floor.

Recently, we opened a revenue ruling project regarding this issue (Treatment of Unreimbursed Partner Expenses, TR-33-67-91). The position taken in our proposed revenue ruling is that a partner's unreimbursed expenses do not meet the definition of trade or business deductions under section 62 of the Code. Thus, such expenses should be deducted below the line under section 63, subject to the section 67 limitations. However, this position is only proposed, and has not been reviewed above the Assistant Chief Counsel, Income Tax and Accounting level.

Further, this issue is being litigated by the Department of Justice in [REDACTED]. The Department of Justice's litigating position is consistent with the position taken in our proposed revenue ruling.

If you have any questions, please do not hesitate to contact Mr. Karl A. La Cour of this office at FTS 566-6438.

(signed) Robert A. Berkovsky

By: _____
Robert A. Berkovsky
Chief, Branch 2

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